

HEBER CREEPER

P.O. BOX 69, HEBER CITY, UTAH 84032

PHONE: (801) 654-2621

January 11, 1977

HEBER CREEPER, INC.
MINUTES BOARD OF DIRECTORS MEETING
JANUARY 10, 1977

Heber Creeper Directors Present:

Lowe Ashton, President
Wesley Budd
J.R. Edwards
R.R. Green
Craig Drury

Jim Ritchie
C.H. Nielsen
Gordon Mendenhall, V. President
J.D. Boggess

Foundation Directors Present:

J. R. Edwards, President
C.H. Nielsen, V. President
Dan Metcalf
R.J. Hatfield

Al LeFevre
Don Reimann
Lawrence Lingual
Gordon Wheeler

Also Present: Cindy Drury

The Heber Creeper, Inc. informed the Foundation membership that it was necessary for the Company to refinance if it is to remain in operation for the coming season. The decision to refinance was contingent upon the willingness of the State of Utah or Wasatch County, or a combination of entities other than the company to agree to a general track restoration program that would relieve the company of its responsibilities to the track.

Other conditions were the calculation of lease payment, that must be based on a percentage of net profits rather than fixed, a forgiveness of rent now due, and the ability to incorporate the salvage materials in Provo Canyon.

During the past week, those conditions have been presented to the State of Utah, Wasatch County, Zions Bank, and the Small Business Administration. Zions Bank and S.B.A. have agreed to consider refinancing the company to a maximum of a \$350,000.00 loan, provided the track restoration program is agreed to by an entity other than the company, and also provided that the Company can expand its collateral to include the railroad equipment now under lease from various entities including the Foundation. The Heber Creeper Board of Directors therefore requested this meeting between the

joint membership so that a complete understanding of the position of the operation can be explained to all, and that the decisions can be made for the ultimate benefit of all.

With the acquisition of locomotives from Reed Hatch, White Mountain Scenic Railroad, Arizona, that will become the primary locomotive power of the company, the need to use locomotives owned by the Foundation becomes relatively slight. However, there is a Pre-Paid lease on the books of the Company in the amount of \$68,189.14, that is essentially a debt owned by the Foundation to the Company.

We suggested therefore that the assets of the Foundation, locomotives and cars that are currently on the terminal grounds be sold to the company in exchange for a cancelation of the debt. The advantages to the Company are obvious: The locomotives and equipment could be pledged as security, or if necessary, sold or exchanged for more useable equipment, dependent of the financial condition of the company. They would become depreciable assets, a non-cash expense, which helps us with cash flow. The debt position between the Foundation and the Company would be eliminated, therefore the relationship between the Foundation, the IRS, and the Company would be on a basis more realistic in terms of the activities of the Foundation being more in line with the guidelines established by the IRS. The ability to the Company and the Foundation to function and keep steam railroading a viable part of Utahs tourist industry, would therefore be enhanced to the benefit of all.

The general response to this request, as the writer heard it, was one of sympathy and willingness to help from the Foundation membership if it could and still operate within the confines of its Articles of Incorporation and the restrictions placed upon it by the new conditions of the IRS. However, according to President Edwards, his interpretation of the latest conference with the IRS indicated that the Foundation could not sell assets to a private concern without violating IRS regulations. But, that the Foundation would meet and see what they could do about this matter.

The conversation included a general discussion about the losses incurred by the company, the problems inherent with seasonal operations, lack of money to pay for full-time competent personnel, etc., and ended approximately 7:00 p.m.

On the following day, Lowe Ashton called his tax accountants to find if in fact there were IRS rulings that prohibited private non-profit foundations from dealing with profit oriented corporations in leasing or selling assets. The un-official response based on the limited amount of information available, but also from a tax professional with a large background of tax work for foundations, and a personal knowledge of the relations of the Creeper to the Foundation including personally knowing the auditor from IRS who made the rulings from San Francisco was that there were no rulings that prevented a tax-exempt foundation from dealing with a profit-corporation unless it specifically stated so in the Articles of Incorporation, and if it so stated, then the Foundation violated the law when it signed the original lease and is liable to the Company.

The writer than researched the original Articles of Incorporation of the Wasatch Museum and Foundation and found the following clause:

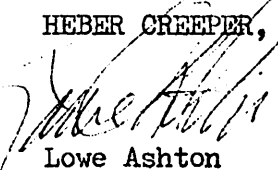
Article IV, Paragraph C, Sub-Paragraph (d), Page Two: "(d) to acquire by purchase, lease, or otherwise, real and personal property, and to mortgage, sell, deed, lease or otherwise manage same in a manner appropriate for museums and the above mentioned purposes" .

The Company therefore suggests to the membership of the Foundation that it is legal for them to sell or lease and still remain as a viable entity with the proper status in the eyes of the Internal Revenue Service.

In closing, the grants now under application by Wasatch County and the State of Utah will be announced this week, and during the first part of February. The Company has prepared the necessary documentation for the Banks and SBA to loan the new money. The next step for the preservation of the steam railroading is in the hands of the Foundation, and we would appreciate a response as soon as possible.

Very truly yours,

HEBER CREEPER, INC.


Lowe Ashton
President